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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

EAGLE VIEW TECHNOLOGIES
INC., PICTOMETRY
INTERNATIONAL CORP.,

Plaintiffs,

vs.

NEARMAP US, INC.,

Defendant.

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S SHORT FORM
DISCOVERY MOTION
REGARDING REQUESTS
SERVED ON OCTOBER 10, 2022
AND EARLIER SERVED
DISCOVERY REQUESTS**

Case No. 2:21-cv-00283-TS-DAO

The Honorable Ted Stewart

Magistrate Judge Daphne A. Oberg

Plaintiffs oppose Nearmap's motion to compel. Nearmap's motion is based on untimely and irrelevant discovery requests, and is premature.

First, Nearmap's October 10, 2022 RFPs, RFAs, and interrogatories are ten days late under the agreed-upon and operative Scheduling Order:

Event	Date
Deadline to serve written discovery before claim construction [R. 34]	September 30, 2022
Close of fact discovery before claim construction [LPR 1.3(a)]	November 11, 2022

Dkts. 98, 99. Nearmap argues that the September 30 deadline does not “apply to non-claim-construction discovery,” yet acknowledges that the November 11 deadline, which includes the same “before claim construction” language, represents the close of *all* fact discovery. Mot. at 2. Nearmap’s reading of the November 11 date belies any argument that Nearmap misunderstood the September 30 deadline. The references to claim construction distinguish these deadlines from any reopening of fact discovery after claim construction under LPR 1.3(b).

Second, Nearmap’s new Rule 30(b)(6) topics are untimely under DUCivR 30-2, which requires 30(b)(6) notices “be served ... at least 45 days before the discovery cutoff date.” Nearmap makes *no* effort to explain why it is not subject to the 45-day deadline, which passed on September 27, 2022. Plaintiffs would be prejudiced if required to respond to these new topics because they will have less time to identify and prepare designees, and forced to do so while busy with other depositions and discovery. This is made worse by the fact that Nearmap previously exceeded its limit of 20 topics, as permitted under DUCivR 30-2.¹ Nearmap again makes no effort address the rule and merely argues (incorrectly) that there is “no material difference” between 40 and 37 topics. Mot. at 2. To the contrary, the difference is material because (1) Nearmap’s additional topics are in violation of DUCivR 30-2’s limit on topics; (2) the new topics invoke entirely new subject areas requiring investigation by Plaintiffs; and (3) they are late, thus giving Plaintiffs less time to prepare.

Third, to the extent Nearmap’s motion is premised on its desire for discovery regarding its proposed patent misuse defense, the motion should be denied because Nearmap does not

¹ Nearmap’s and Plaintiffs’ previously-served notices contained 36 and 37 topics, respectively, which neither party objected to.

currently have a patent misuse defense in this case. Unless and until the Court decides Nearmap's pending motion (Dkt. 101), Nearmap should be barred from seeking anticipatory, hypothetical discovery.

Because Nearmap's new discovery requests are untimely and irrelevant, the Court should not compel any responses.

Finally, Nearmap's motion is improper to the extent Nearmap purports to move on "earlier discovery requests." Mot. at 1. Nearmap has never raised those issues before—Plaintiffs read about them *for the first time* upon receiving Nearmap's motion. Thus, Nearmap has not complied with DUCivR 37-1(a)'s requirement to make "reasonable efforts" to resolve the issue without court intervention.

Nearmap's motion should be denied in its entirety.

Dated: November 1, 2022

/s/ Juliette P. White

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CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of November 2022, I caused to be electronically filed and served the foregoing PLAINTIFFS' OPPOSITION TO DEFENDANT'S SHORT FORM DISCOVERY MOTION REGARDING REQUESTS SERVED ON OCTOBER 10, 2022 AND EARLIER SERVED DISCOVERY REQUESTS with the Clerk of the Court using the Court's electronic filing system, which sent notification of such filing to all attorneys listed on the docket.

/s/ Juliette P. White

Juliette P. White

Attorney for Plaintiffs